

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
3COM CORPORATION,	:	
	:	
Plaintiff,	:	Index No. 07 Civ. 8707 (JSR)(JDF)
	:	
-against-	:	<b>DECLARATION OF THOMAS</b>
	:	<b>VAYS</b>
CAPITAL 4, INC., et. al.,	:	
	:	
Defendants.	:	
-----X	:	

Thomas Vays, being of full age, hereby affirms, under penalty of perjury, the truth of the following:

1. I am counsel for the defendants in this matter and am fully familiar with facts set forth herein. I submit this Declaration in opposition to the motion filed by 3Com Corporation ("3Com") seeking a finding that Capital 4 is in contempt of the Stipulated Preliminary Injunction and for a determination that Capital 4 has waived the attorney-client privilege.

2. On April 2, 2008, I had a telephone conversation with Daniel Rosenfeld, counsel for 3Com in this matter, regarding the Petition filed by Simon Hughes on behalf of various plaintiffs in the State of Texas. During that conversation, Mr. Rosenfeld stated that it was his belief that Capital 4 has waived the attorney-client privilege with respect to communications with Mr. Hughes by virtue of the filing of the Texas Petition. I informed Mr. Rosenfeld that I disagreed, and requested that he provide me with some legal authority in support of his position.

3. At the time of my conversation with Mr. Rosenfeld, he made no mention of the fact that 3Com believed that Capital 4 was in violation of the Stipulated Preliminary Injunction.

4. Attached hereto as Exhibit A is a true and correct copy of an April 9, 2008 correspondence I sent to Mr. Rosenfeld to follow up on my request for any legal authority in support of his position.

5. Attached hereto as Exhibit B is a true and correct copy of an April 23, 2008 correspondence from Mr. Rosenfeld responding to my correspondence of April 9, 2008. The one case cited by Mr. Rosenfeld in his letter related to conflicts of interest, and it does not address the attorney-client privilege. In his correspondence of April 23, 2008, Mr. Rosenfeld alleged for the first time that he believed Capital 4 was in violation of the Stipulated Preliminary Injunction.

6. On May 2, 2008, I responded to Mr. Rosenfeld's correspondence by informing him that Capital had not consented to Hughes' representation of Power of \$Zero customers, and I sent him a copy of the March 10, 2008 letter from Capital 4 to Hughes that is attached as Exhibit A to the accompanying Declaration of F. Davis Dawson.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: New York, New York  
May 16, 2008

WINGET, SPADAFORA &  
SCHWARTZBERG, LLP

By:

  
\_\_\_\_\_  
Thomas Vays (TV 2112)

CERTIFICATE OF SERVICE

I hereby certify that on this 16<sup>th</sup> day of May, 2008, a true and correct copy of the foregoing document was served using the Southern District of New York's Case Management Electronic Filing System, with electronic notification of such filing to all counsel of record.

I also certify that on this date the foregoing was served, via electronic mail and/or regular mail on the following:

Daniel Rosenfeld  
DLA Piper US LLP  
33 Arch Street, 26<sup>th</sup> Floor  
Boston, MA 02110  
[daniel.rosenfeld@dlapiper.com](mailto:daniel.rosenfeld@dlapiper.com)

Simon H. Hughes, Esq.  
The Hughes Law Firm, P.C.  
13280 Northwest Freeway, No. F-400  
Houston, Texas 77040  
[Simon@hugheslegal.com](mailto:Simon@hugheslegal.com)

Ronald P. Gossett, Esq.  
Gossett & Gossett, P.A.  
4700 Sheridan Street, Building I  
Hollywood, Florida 33021  
[RonGossett@gossettlaw.com](mailto:RonGossett@gossettlaw.com)

/s/ Thomas Vays  
Thomas Vays (TV 2112)